IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.251 OF 2006

Smt.Parveen J. Jugari ...Petitioner.

Versus

Javed H. Jugari & Ors. ...Respondents.

Shri O.R.Tiwari for the Petitioner.
Shri M.Arshad Haindaday for Respondent No.1.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 24th JANUARY, 2006.

P.C. :

1. Heard Shri Tiwari - learned Counsel appearing for the petitioner and Shri Haindaday - learned Counsel appearing for the contesting respondent No.1.

2. The submission of the petitioner is that in the matrimonial petition, which is filed in the Family Court by the petitioner, after examining three witnesses over a period commencing from November, 2004 till September, 2005, she intended to examine two witnesses. The affidavits in lieu of examination-in-chief of these witnesses were ready with the petitioner and copy thereof could not be served as the petitioner was required to go out of Bombay on account of some demise in her family and after the death of her brother there was some family dispute

which required her to prolong her stay at her native place and thereafter on account of the ensuing rains, she could not reach Mumbai in time, to attend the Court. An application was presented by her on 13th September, 2005 for granting an opportunity to her to examine these two witnesses. That application was opposed by the first-respondent husband and the trial Court in the impugned order has observed, according to Shri Tiwari erroneously, that, no great loss will be caused to the petitioner if remaining two witnesses are not examined. Further, the reason assigned that the adjournment is without any cause, is also incorrect. He submits that a last opportunity be granted to the petitioner.

3. Shri Haindaday appearing for respondent No.1 points out that as far as the witness Mamta is concerned, her affidavit in lieu of the examination-in-chief was already forwarded, but, for strange reasons she was not examined for a period of about a year and half. Since, the Petition is pending from 2000 the trial Court was right in rejecting the application.

4. After considering the rival contentions, in my view, interest of justice would be served, if the application made by the petitioner on 13th September, 2005, is granted in part. After she has examined the

witnesses over a period of time, it cannot be said that the reasons assigned in the application for adjournment were not genuine. There is some substance in the contention of Shri Haindaday that as far as witness Mamta Shedge is concerned she could have been summoned earlier when a copy of her affidavit was handed over. As far as the other witness Rajendra Ramchandra Jadhav is concerned, his affidavit is filed alongwith the application on 13th September, 2005. In my view, ends of justice would be met if the petitioner is given an opportunity to examine this person as her last witness.

5. Shri Tiwari undertakes to hand over a copy of the affidavit of Rajendra Ramchandra Jadhav to Shri Haindaday within a period of one week from today. In case, such copy is handed over, the trial Court to fix a date for cross-examination of this witness by the first respondent - husband and thereafter shall close the evidence of the petitioner. Shri Tiwari also undertakes before this Court that no adjournment will be sought on the ground of absence of the petitioner's Advocate or the said witness, on the date, which would be fixed for his cross-examination. Needless to state that the trial Court is at liberty to fix the date for attendance of this witness for cross-examination by the first respondent. Further, needless to add that in case, the witness does not attend the Court on the date, so fixed or any adjourned date if his

cross-examination is incomplete, the evidence of the petitioner shall be closed. Thereafter, it would be open for the trial Court to proceed in accordance with law and record, if necessary, the evidence of the first respondent - husband. Petition is disposed of. The order under challenge is set-aside and stands substituted by the above directions and order.

(S.C.DHARMADHIKARI,J.)